Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for decision

Richardson International Limited,

applicant,

and

Grain and General Services Union (ILWU–Canada),

respondent.

Board File: 30009-C
Neutral Citation: 2014 CIRB 721
April 17, 2014

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and Robert Monette, Members.

Counsel of Record

Ms. Cynthia L. Lazar, for Richardson International Limited;

Ms. Ronni A. Nordal, for Grain and General Services Union (ILWU–Canada);

These reasons for decision were written by Mr. Graham J. Clarke, Vice-Chairperson.

I. Introduction

[1] As part of a larger corporate transaction, Richardson International Limited (Richardson) acquired, *inter alia*, certain Saskatchewan-based grain assets from Viterra Inc. (Viterra). The relevant Viterra assets for the purposes of this decision were 10 unionized grain elevators as well as crop input centers (Viterra Elevators).

[2] The Board had previously certified the Grain and General Services Union (ILWU–Canada) (GSU) for a bargaining unit involving the Viterra Elevators.

[3] Prior to the transaction, Richardson operated its own non-union grain elevators and crop input agri-centers in Saskatchewan.

[4] The Board confirmed in a July 31, 2013 decision that Richardson was the successor employer for the purposes of the GSU collective agreement. It further asked its Industrial Relations Officer (IRO) to prepare a Report about the case. The parties received an opportunity to comment on that December 11, 2013 Report, as revised.

[5] Richardson has asked the Board to declare that the non-union Saskatchewan employees in its pre-existing facilities now fall within the GSU's all-employee bargaining unit. In addition, Richardson asked the Board to oblige the GSU to demonstrate majority support in that unit, either as of the date of the sale of business application, or through a representation vote.

[6] The GSU resisted Richardson's application and argued that the need to manage both unionized and non-union employees did not constitute hardship. The GSU further argued there was no need for the Board to change the existing labour relations *status quo*.

[7] In its December 13, 2013 letter to the Board following receipt of a revised IRO Report, the GSU further clarified its position:

> After review of the December 11, 2013 report, GSU writes to clarify its position:
>
> GSU maintains that the collective bargaining rights guaranteed by the *Canada Labour Code* of employees at the locations acquired by Richardson must not be affected by the sale of business, including having the GSU as their certified bargaining agent.

[8] The Board has decided to dismiss Richardson's application for the reasons which follow.

II. Facts

[9] The GSU has long held representation rights for grain employees in Saskatchewan. Canada's grain industry has experienced significant change and consolidation in recent decades, a process which no doubt contributed to the current application.

[10] In April, 2011, by Order No. 9959-U, the Board merged several bargaining units and updated the bargaining unit description for the GSU's Country Operations and Maintenance Unit at Viterra. That bargaining unit was described as follows:

> "all employees of Viterra Inc. in the Province of Saskatchewan who are employed in the Employer's Country Operations, Maintenance and ancillary operations commonly referred to as the Country Operations and Maintenance Unit, excluding Administrative Coordinator-Research & Development, Coordinator-EH & S, Coordinator Risk and Regulatory Reporting, Head Chemist, HR Business Partner, Manager Agronomic Services, Manager Asset Utilization, Manager Automation and Supply Chain Services, Manager Automation Services, Manager Automation Support, Manager Breeding Services, Manager Electrical Services, Manager Field Evaluation, Manager Pathology Research, Manager Maintenance and Planning, Manager New Trait Breeding and Development, Manager Quality Affairs & Food Safety, Manager Seed Research, Manager Research & Development Growth Facilities, Market Centre Manager, NH3 Operations Manager, Plant Manager-Seed, Plant Manager-Special Crops, Project Manager, Regional Account Manager, Regional Administrative Coordinator, Regional Maintenance Manager, Regional Manager, Research Agronomist, Senior Agronomist, Senior Breeder, Senior Facility Manager-Special Crops and Senior Research Associate."

[11] In December, 2012, Glencore International Plc (Glencore), through a subsidiary, acquired all of the shares of Viterra. Richardson had agreed previously with Glencore to purchase various Viterra assets if Glencore completed its acquisition.

[12] On April 30, 2013, Glencore transferred, *inter alia*, ownership of the 10 Viterra Elevators to Richardson. Richardson started operating the Viterra Elevators as of May 1, 2013.

[13] At the time of the sale of business, the GSU Viterra collective agreement had a term commencing on November 1, 2012 and ending on October 31, 2015.

[14] Richardson employed roughly 374 employees, and used its own repair crew, for its non-union grain elevators and crop input agri-centers in Saskatchewan.

[15] Following the transaction with Glencore, Richardson started operating the unionized Viterra Elevators, which employed roughly 118 employees. Of those 10 Viterra Elevators, eight operated in locations where Richardson has no other grain elevator or facilities. In two locations, Carrot River and Davidson, both Richardson and Viterra facilities existed. Appendix D to the IRO's December 11, 2013 Report provides a table illustrating the geographic location of Richardson's Saskatchewan-based operations (attached).

[16] Richardson now applies different benefit and pension plans given the fact it now manages both union and non-union employees.

[17] Richardson suggested that employees in its facilities have been, are or will be "intermingled". It advised the Board that it structures its business units based not on labour relations arrangements, but rather on geographic considerations. In addition, its employees are cross-trained so that they may work at various locations, both unionized and non-unionized, as operational considerations require.

[18] The GSU disagreed that much intermingling or cross-training of employees, if any, had occurred.

[19] These facts gave rise to Richardson's application requesting a declaration that its non-union employees fell within the scope of the GSU's bargaining unit and, *inter alia*, that the Board decide whether the employees want the GSU to continue to represent that unit.

III. Parties' Positions

A. Richardson

[20] Richardson, in its July 2, 2013 reply, described the primary thrust of its application as a request to have the existing bargaining unit description apply to what it called the "now intermingled "all-employee" group". It further argued:

> That is the unit for which GSU is the certified bargaining agent. Given that the membership in the unit has now more than doubled, GSU ought to be required to show majority support in the larger unit. The Applicants are not requesting a reconfiguration of the bargaining structure. They are requesting that the existing bargaining structure be applied, in accordance with the sale of business provisions of the *Canada Labour Code*.

[21] Richardson also referred to certain situations where the Board had held votes involving both unionized and non-unionized employees.

[22] Richardson argued that it was not proposing any change to the GSU's "all-employee" bargaining unit. It simply asked the Board to recognize the *status quo*. However, since its non-union employees now fell within the scope of the existing certificate because of the sale of business, and since they outnumbered the unionized employees, it asked the Board to verify the GSU's support in the unit.

[23] Richardson suggested that the GSU was asking for a change to the *status quo* because it asked the Board to add the phrase "formerly owned by Viterra" to the existing bargaining unit description.

B. GSU

[24] The GSU argued there was no reason for the Board to interfere with the *status quo*. The Board had certified the GSU to represent the employees at the Viterra Elevators. Richardson had raised no valid reason to change this situation, especially when its application would put the GSU's members' existing *Code* rights at risk. The GSU noted this case did not involve a dispute between competing bargaining agents following a sale of business.

IV. Relevant *Code* Provisions

[25] Sections 44(1) and (2) set out what occurs when an employer sells a business:

> 44. (1) In this section and sections 45 to 47.1,
>
> "business" means any federal work, undertaking or business and any part thereof;
>
> "provincial business" means a work, undertaking or business, or any part of a work, undertaking or business, the labour relations of which are subject to the laws of a province;
>
> "sell", in relation to a business, includes the transfer or other disposition of the business and, for the purposes of this definition, leasing a business is deemed to be selling it.
>
> (2) **Where an employer sells a business,**
>
> *(a)* **a trade union that is the bargaining agent for the employees employed in the business continues to be their bargaining agent;**

(*b*) a trade union that made application for certification in respect of any employees employed in the business before the date on which the business is sold may, subject to this Part, be certified by the Board as their bargaining agent;

(*c*) **the person to whom the business is sold is bound by any collective agreement that is, on the date on which the business is sold, applicable to the employees employed in the business; and**

(*d*) the person to whom the business is sold becomes a party to any proceeding taken under this Part that is pending on the date on which the business was sold and that affects the employees employed in the business or their bargaining agent.

(emphasis added)

[26] The parties did not dispute, and the Board agreed, that a sale of business had taken place when Richardson acquired the Viterra Elevators from Glencore. Richardson became the employer for the purposes of the GSU's collective agreement.

[27] Section 46 grants the Board a wide discretion to decide any question which arises from a sale of business under section 44:

46. **The Board shall determine any question that arises under section 44**, including a question as to whether or not a business has been sold or there has been a change of activity of a business, or as to the identity of the purchaser of a business.

(emphasis added)

[28] Section 45 of the *Code* grants the Board the discretion to review bargaining units following a sale of business:

45. In the case of a sale or change of activity referred to in section 44, **the Board may, on application by the employer or any trade union affected, determine whether the employees affected constitute one or more units appropriate for collective bargaining.**

(emphasis added)

[29] If the Board decides to conduct a review, section 18.1 of the *Code* governs the process:

18.1 (1) On application by the employer or a bargaining agent, the Board may review the structure of the bargaining units if it is satisfied that the bargaining units are no longer appropriate for collective bargaining.

(2) **If the Board reviews, pursuant to subsection (1) or section 35 or 45, the structure of the bargaining units, the Board**

> (*a*) **must allow the parties to come to an agreement, within a period that the Board considers reasonable, with respect to the determination of bargaining units and any questions arising from the review; and**
>
> (*b*) **may make any orders it considers appropriate to implement any agreement.**

(3) If the Board is of the opinion that the agreement reached by the parties would not lead to the creation of units appropriate for collective bargaining or if the parties do not agree on certain issues within the period that the Board considers reasonable, the Board determines any question that arises and makes any orders it considers appropriate in the circumstances.

(4) For the purposes of subsection (3), the Board may

> (*a*) determine which trade union shall be the bargaining agent for the employees in each bargaining unit that results from the review;
>
> (*b*) amend any certification order or description of a bargaining unit contained in any collective agreement;
>
> (*c*) if more than one collective agreement applies to employees in a bargaining unit, decide which collective agreement is in force;
>
> (*d*) amend, to the extent that the Board considers necessary, the provisions of collective agreements respecting expiry dates or seniority rights, or amend other such provisions;
>
> (*e*) if the conditions of paragraphs 89(1)(*a*) to (*d*) have been met with respect to some of the employees in a bargaining unit, decide which terms and conditions of employment apply to those employees until the time that a collective agreement becomes applicable to the unit or the conditions of those paragraphs are met with respect to the unit; and
>
> (*f*) authorize a party to a collective agreement to give notice to bargain collectively.

(emphasis added)

[30] An employer or a bargaining agent may ask for a bargaining unit review at any time under section 18.1(1). However, the applicant in that regular scenario must show that the structure of the bargaining units is no longer appropriate for collective bargaining.

[31] Exceptionally after a sale of business or single employer declaration, and only if the Board decides under section 45 to conduct a review, the process starts at section 18.1(2). There is no need for an applicant to demonstrate that the bargaining unit(s) are no longer appropriate for collective bargaining in that situation: *Viterra Inc.*, 2009 CIRB 465 (*Viterra 465*) at paragraphs 9–10.

V. Analysis and Decision

[32] In their original pleadings, both parties requested that the Board hold an oral hearing in this case. Pursuant to section 16.1 of the *Code*, the Board is not required to hold an oral hearing:

> 16.1 The Board may decide any matter before it without holding an oral hearing.

[33] The Board has concluded that the parties' multiple submissions, as well as the December 11, 2013 IRO Report, have provided it with sufficient information to decide this case.

[34] Richardson's submissions demonstrated several areas of inconvenience it is experiencing arising from having to manage both unionized and non-unionized employees. For example, if it moves an employee from one location to another, different terms and conditions of employment may apply, including those related to pension and benefits.

[35] Richardson similarly highlighted the complexity of managing the different administrative and compensation structures between Richardson and Viterra. Employee transfer requests and training cause similar challenges.

[36] The Board does not doubt that such issues exist. But neither were they unforeseeable when Richardson made the decision to purchase Viterra Elevators. It had full knowledge of the GSU's longstanding representation rights and the employees' entitlements to certain terms and conditions of employment arising from their collective agreement.

[37] There appear to have been no discussions about harmonizing some or all of the employees' terms and conditions of employment, whether through voluntary recognition of the GSU or otherwise.

[38] The Board faced a similar situation in *Viterra 465, supra,* at paragraphs 44–45:

> [44] **Viterra is fully entitled to structure itself in the way which makes the most business sense.** If Viterra wants to function seamlessly in Alberta, Saskatchewan and Manitoba, then it can do so administratively. The Board previously described this situation at paragraph 31 of *Viterra* 442:
>
> > [31] In August 2007, the changes at SWP continued. SWP adopted the trade name of "Viterra". The business consisting of the SWP's and AU's assets would be operated as a single new entity. **Viterra established a transition plan to create one overall business and to promote synergies "without regard to existing artificial provincial and bargaining unit boundaries".**

> [45] **But the fact that an employer has legitimately decided to reorganize itself does not mean that its bargaining units therefore must be changed to reflect its new organizational structure. Rather, the bargaining unit structure is a fact that an employer must keep in mind when organizing itself. It can organize itself as an indivisible undertaking; but it still has to work with the existing bargaining unit structure, unless it can convince the Board to modify it.**
>
> (emphasis added)

[39] Richardson has not persuaded the Board that the scope of the GSU's current bargaining unit includes Richardson's pre-existing employees. Neither has it persuaded the Board to exercise its discretion under section 45 of the *Code* in order to conduct a bargaining unit review.

[40] We will deal with each point separately.

A. Scope of the GSU's bargaining unit

[41] Technically, while Richardson did not refer explicitly to section 18 of the *Code*, its submissions request that the Board interpret the scope of the GSU's existing bargaining unit.

[42] Unlike some labour boards, the CIRB maintains jurisdiction over the intended scope of its bargaining units. It described this continuing jurisdiction in *Garda Cash-In-Transit Limited Partnership*, 2010 CIRB 503 (*Garda 503*):

> [28] **The Board, contrary to the practice of many of its provincial counterparts, remains seized of the description and scope of all bargaining units it issues.** The Board's model follows that found in Quebec labour law: see generally *Teleglobe Canada* (1979), 32 di 270; [1979] 3 Can LRBR 86; and 80 CLLC 16,025 (partial report) (CLRB no. 198); and *Canadian Pacific Limited* (1984), 57 di 112; 8 CLRBR (NS) 378; and 84 CLLC 16,060 (CLRB no. 482).
>
> [29] **While in Ontario parties are generally free to modify their bargaining unit description, and indeed, the original certification is often described as being "spent" after it is issued, parties do not have a similar freedom federally.**
>
> [30] **Instead, if there are disputes about whether an employee falls within the scope of a bargaining unit, a party can bring that dispute to the Board, as CUPE did in this case, pursuant to section 18 of the *Code*:**
>
> > **18. The Board may review, rescind, amend, alter or vary any order or decision made by it, and may rehear any application before making an order in respect of the application.**
>
> (emphasis added)

[43] Section 18 allows the Board to consider whether certain employees fall within the scope of an existing bargaining unit.

[44] If the GSU had applied to the Board for a declaration that its bargaining unit included all of Richardson's non-union employees, then the Board would have had to examine certain questions. First, the Board would have had to determine if the scope of the GSU's pre-existing unit included employees working for a later purchaser of the Viterra Elevators.

[45] Second, if the scope did not apply to the purchaser's employees, then the Board would have required the GSU to satisfy the "double majority" rule. The GSU would have had to show majority support among the new employees it sought to add to the expanded scope of its unit: *Garda 503*, *supra* at paragraphs 33–36:

> [33] **The Board's analysis is straightforward when considering if employees fall within the scope of an existing unit. Generally, if new employees fall within the original scope of a bargaining unit, then they will be added to that bargaining unit without a requirement that the trade union demonstrate majority support among the employees to be added.** The union will simply need to establish that it holds overall majority support in the bargaining unit. A vote could also be ordered.
>
> [34] There is an exception to this rule if the number of employees to be added would impact the overall majority the trade union already holds in the original bargaining unit (see *Viterra Inc.*, 2009 CIRB 472, at paragraph 27).
>
> [35] **Conversely, where a trade union seeks to add employees to its existing bargaining unit, but that addition would enlarge the scope of the bargaining unit, then the Board has required that the trade union demonstrate majority support among the group to be added.**
>
> [36] In such a case, while the Board will accept that the trade union maintains a majority in its existing bargaining unit, it requires the trade union to establish majority support among the new employees to be added, just as it would if the same trade union filed an independent certification application to represent that new group. **This is commonly known as the "double majority" rule.**

[46] The scope of the GSU's original bargaining unit could have included more employees as a result of an expansion in Viterra's business. This occurred, for example, in *Viterra Inc.*, 2009 CIRB 442. Indeed, this is the reason the Board traditionally prefers "all-employee" bargaining unit descriptions, rather than enumerating every position individually.

[47] But the Board has not been satisfied that the scope of the GSU's bargaining unit was ever intended to sweep in non-union employees in situations where an employer like Richardson purchased a business like Viterra Elevators. That scenario was simply not within the contemplated scope of the original bargaining unit description.

[48] A similar result occurred in *Garda 503*, *supra*, where the Board dismissed a bargaining agent's argument that, as a result of a series of transactions, its Quebec-based bargaining unit now applied to a group of employees in Toronto:

> [38] **The determination of the scope of the trade union's bargaining unit is more art than science. CUPE argued forcefully that if Sécur had decided to expand its business into Toronto, then there would have been no issue but that the bargaining unit the Board had granted it would cover that additional work.** CUPE maintained that its bargaining unit description had no geographic limitation, which meant that the Toronto employees performing armoured car services must necessarily be covered by the scope of its bargaining unit.
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> [39] **The Teamsters, on the other hand, argued that a territorial limitation for CUPE's bargaining unit existed, given the context in which the Board originally determined the description of Sécur's bargaining unit.** When the Board certified Sécur, Sécur only operated in Quebec. The Teamsters also noted that, from a corporate perspective, Garda Ontario had always existed as a wholly separate corporation from Garda Quebec.
>
> [40] This resulted from the fact that both Sécur and Riscon had operated as separate businesses before being purchased by Group Garda.
>
> [41] **The Board has concluded that the current scope of CUPE's bargaining unit would not extend to work being performed outside Quebec.** The fact the Board found that Sécur's extraprovincial routes brought it within federal jurisdiction does not mean that Sécur's bargaining unit was therefore open-ended.
>
> [42] The Board is satisfied that prior to Group Garda purchasing Sécur in 2003, a transaction which clearly signalled an enhanced interest in the armoured car business, Group Garda had already purchased Garda Ontario (Riscon), which had a small, but pre-existing, armoured car operation in Toronto.
>
> (emphasis added)

[49] The Board disagrees therefore with Richardson's underlying assumption that the scope of the GSU's bargaining unit with Viterra automatically sweeps in Richardson's pre-existing non-union employees. The GSU's unit may have covered more employees if Viterra grew, but it never had the scope Richardson attributes to it for situations where an employer acquired part of Viterra's business. Because of the myriad scenarios where a larger employer could purchase a smaller unionized business, the Board would not envision a bargaining unit scope which automatically covers the purchaser's employees.

[50] Further support for this conclusion will be explored in the next section where the Board examines the trade union's role in determining the scope of its bargaining unit.

B. Application of section 45

[51] Section 45 of the *Code* provides the Board with the flexibility to deal with labour relations situations which arise as a result of the sale of a business.

[52] Prior to the 1999 amendments to the *Code*, the previous section 45 used the term "intermingling" explicitly, but only granted trade unions the right to ask the Board to resolve bargaining unit issues:

> 45.(1) **Where an employer sells his business and his employees are intermingled with employees of the employer to whom the business is sold**, the Board may, **on application to it by any trade union affected,**
>
> (*a*) **determine whether the employees affected by the sale constitute one or more units appropriate for collective bargaining;**
>
> (*b*) **determine which trade union shall be the bargaining agent** for the employees in each such unit; and
>
> (*c*) amend, to the extent the Board considers necessary, any certificate issued to a trade union or the description of a bargaining unit contained in any collective agreement.
>
> (emphasis added)

[53] Almost all of the pre-1999 cases concerned unionized employees of the seller being intermingled with unionized employees of the purchaser. The Board used section 45 to resolve these situations, such as by determining which bargaining agent would represent the enlarged bargaining unit.

[54] The 1999 amendments to section 45 allowed either an employer or a trade union to apply to the Board to review bargaining units following a sale of business. There was no explicit requirement for intermingling:

> 45. In the case of a sale or change of activity referred to in section 44, the Board may, on application by the employer or any trade union affected, determine whether the employees affected constitute one or more units appropriate for collective bargaining.

[55] The underlying rationale of the sale of business provisions is to preserve collective bargaining rights. This rationale remained unchanged following the 1999 amendments. In *Viterra 465, supra*, Viterra argued that the appropriate bargaining unit should cover all three prairie provinces where it now operated, rather than just Saskatchewan where the GSU had been certified. That argument did not persuade the Board:

> [31] **Viterra has not convinced the Board that it should create a single bargaining unit and then order a vote of the "in scope" employees, both union and non-union, to determine whether or not they want the GSU to be their bargaining agent.**
>
> [32] The Board asked Viterra during argument about the possible consequences of their request. The members of the GSU could conceivably lose their representation rights depending upon the results of the vote. Viterra argued that the Board should not speculate on the results of a vote. The Board respectfully disagrees and can consider the impact of a bargaining unit consolidation on employee wishes.
>
> [33] There are several reasons motivating the Board's decision. **Where several different bargaining unit reconfigurations exist, and some do not involve the possible disappearance of a long-standing bargaining agent, then those which promote collective bargaining will be preferred. The intent of the sale of business provisions in the *Code* is to preserve collective bargaining rights: *Bombardier Inc.*, [2001] 2 F.C. 429 (F.C.A.) at paragraph 3.**
>
> [34] The Board, as part of a sale of business process covered by section 45, is determining "whether employees affected constitute one or more units appropriate for collective bargaining." **It would be rare for the Board to adopt a reconfiguration, when several other options exist, which could have, as a foreseeable consequence, the elimination of a bargaining agent which has represented employees for over sixty years.**
>
> [35] Basic principles governing certification also support the Board's determination. **While Viterra may prefer that the GSU be obliged to try to represent all of its employees across three provinces, that preference runs counter to the way the *Code* is structured.**
>
> (emphasis added)

[56] *Viterra 465, supra*, dealt with a situation where multiple bargaining units existed. The Board concluded that some of the bargaining units should be merged. The instant case deals with a single bargaining unit. Nonetheless, the Board's comments in *Viterra 465* remain germane.

[57] The *Code* gives the trade union the initial right to set the scope of its bargaining unit. That right is subject to the Board's overriding discretion to certify an appropriate bargaining unit, as explained further in *Viterra 465, supra*:

[40] The Board fully recognizes that a trade union's suggested bargaining unit scope is not definitive. The Board may in an initial certification application impose a different bargaining unit if it believes the proposed unit is inappropriate.

[41] Similarly, in a bargaining unit review under section 18.1, a bargaining agent may be forced to compete with other existing bargaining agents to represent a merged bargaining unit for which no bargaining agent ever sought bargaining rights.

[42] **Nonetheless, in a situation where only one bargaining agent is involved, and an employer suggests that that bargaining agent must attempt to represent all employees, whether unionized or not, in one bargaining unit, the Board can take into consideration, by analogy, the *Code*'s basic principles when it comes to determining bargaining units.**

[43] **While in some bargaining unit reconfigurations a bargaining agent may lose its representation rights to another bargaining agent, such as in *Dover*, *supra*, the GSU's situation here is different. There is no competing bargaining agent in this case. A debate about which bargaining agent should represent employees when units are consolidated is very different from a debate about whether employees should have a bargaining agent at all.**

...

[46] **While Viterra's suggested single unit is one possible outcome of this bargaining unit review, the Board is not persuaded that there are compelling labour relations reasons to grant that request. Indeed, the granting of that request would ignore some very fundamental principles in the *Code* with regard to the preservation of bargaining rights following a sale of business and the fact that it is generally up to the trade union, and not the employer, to determine the scope of its representation.**

(emphasis added)

[58] The Board in *Viterra Inc.*, 2012 CIRB 633 again considered a trade union's right to suggest the scope of its described bargaining unit:

[48] The Board's conclusion as mentioned at the outset does not necessarily mean it disagrees with Viterra's position that its supervisory employees, and those with the title "Assistant Manager", could be employees under section 3 of the *Code* and included in a bargaining unit. Section 27 allows the Board to consider whether to include these types of supervisory employees in a bargaining unit.

[49] **Similarly, the Board considered Viterra's suggestion to add office staff to the GSU's proposed production and maintenance bargaining unit. That configuration is certainly one option, among many, from which the Board could choose.**

[50] The Board considered Viterra's position as it evaluated the appropriateness of the GSU's proposed production and maintenance unit. **The *Code* makes explicit reference to the fact the trade union initially proposes the unit. The Board will often not intervene in the trade union's suggested bargaining unit, unless the Board concludes that it is not appropriate.**

> [51] **While Viterra makes various arguments about what the optimum bargaining unit might be at the Mill, the Board does not find that these arguments demonstrate that the GSU's suggested unit was inappropriate.**
>
> (emphasis added)

[59] Richardson has not persuaded the Board that its decision to purchase a business which was subject to a collective agreement justifies conducting a review under sections 45 and 18.1 of the *Code*. The British Columbia Court of Appeal in *Actton Transport Ltd.* v. *British Columbia (Director of Employment Standards)*, 320 D.L.R. (4th) 310 (*Actton*) recently commented that the challenges arising when an employer decides to operate in both federal and provincial jurisdictions does not impact the constitutional analysis:

> **34.** This argument is an expression of the appellants' "all or nothing" approach that they took from the beginning of this dispute, namely, that since Actton is the employer and Actton operates a federally regulated trucking business, all that it does is federal. If that were correct, then the *Empress Hotel* case (*Canadian Pacific Railway Co. v. Attorney General for British Columbia*, [1950] A.C. 122, [1950] 1 D.L.R. 721 (P.C.)) and a long line of similar cases would have been decided differently: see, for example, *Westcoast Energy Inc. v. Canada (National Energy Board)*. Running a railroad is one thing, operating a hotel is quite another.
>
> ...
>
> **36. Counsel for the appellants presented a list of hypothetical difficulties if Actton's business was divided jurisdictionally. This is said to inform the jurisdictional adjudication.**
>
> **37. The answer to this contention is that it is the Constitution which determines jurisdiction, not the style of the business organization or its convenience. If Actton chooses to operate in both jurisdictions, it will have to accommodate both labour and employment schemes. ...**
>
> (emphasis added)

[60] In paraphrasing *Actton*, if Richardson decides to purchase and operate a unionized business, then it will have to accommodate the inherent union and non-union labour and employment regimes it acquires.

[61] The current situation differs from one where a sale of business might result in new employees being added to a single worksite. As the attachment from the IRO Report illustrates, eight of the Viterra Elevators are geographically removed from any other Richardson facility. In two cases only, both former Viterra and Richardson assets exist in close proximity.

[62] Even if we were to accept Richardson's evidence, which the GSU disputes, about intermingled employees, and the current need to manage and maintain separate systems for unionized and non-unionized employees, such foreseeable situations do not satisfy the Board about the need for a bargaining unit review.

[63] This does not mean that Richardson cannot at some point in the future file an application under section 18.1 requesting a bargaining unit review. Any such request would be dealt with pursuant to the section 18.1 jurisprudence which requires an applicant to demonstrate that the bargaining units are no longer appropriate for collective bargaining.

[64] In the instant case, Richardson has not persuaded the Board that there are any labour relations reasons for proceeding with a review following its decision to purchase a business that was subject to a collective agreement.

[65] The Board has attached an amended certification order No. 10549-U to reflect the Board's decision.

[66] This is a unanimous decision of the Board.

Graham J. Clarke
Vice-Chairperson

John Bowman
Member

Robert Monette
Member

Board File 30009-C
Appendix D
Facilities

Location	Type	Year Built	Capacity	Total Capacity	Acquired from Glencore	Number of Employees	Comment
Alameda	P	1967	1070	7470	*	5	
	A	2000	4600				
	A	1963	1800				
Antler						3	No elevator Crop Input only
Assinboia	P	1998	17500	39500	*	22	
	A	1998	22000				
Balgonie	P	2000	17140	31640		10	
	A	2012	7250				
	A	2012	7250				
Cabri	P	1917	580	3700		1	
	A	1959	1260				
	A	1964	1860				
Canora	P	1992	10000	20070		12	
	A	2008	3350				
	A	2008	3360				
	A	2008	3360				
Calton Crossing	P	1998	17500	27570		16	
	A	2008	3350				
	A	2008	3360				
	A	2008	3360				
Carrot River	P	1964	1720	10000		8	
	A	1966	4280				
	A	1967	4000				
Carrot River North	P	1969	2970	14500	*	16	
	A	1991	1110				
	A	1991	1110				
	A	1991	1110				
	O	1999	5600				
	A	1960	2600				
Corinne	A	1997		48790		19	
Coronach	P	1927	700	7590		8	
	A	1980	3360				
	O	1979	3530				
Crooked River	P	1997	17350	24350		15	
	A	2013	7000				
Davidson	P	1928	730	5770		4	
	A	1968	2800				
	A	1961	2240				
DAVIDSON II	P	1993	9500	16500	*	6	
	A	2000	3500				
	A	2000	3500				

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Appendix D
Facilities

Location	Type	Year Built	Capacity	Total Capacity	Acquired from Glencore	Number of Employees	Comment
Dixon	P	1994	9500	28900		20	
	A	2009	3340				
	A	2009	3330				
	A	2009	3330				
	A	1999	9400				
Estevan	P	1990	3150	14050		8	
	A	1998	1350				
	A	1998	1350				
	A	1998	1350				
	A	1998	1350				
	A	1998	1350				
	A	1998	1350				
	A	1992	1400				
	A	1992	1400				
Foam Lake West						7	No elevator Crop Input only
Hamlin	P	1999	17140	31540		15	
	A	2011	7200				
	A	2011	7200				
Imperial						6	Only office space
Kamsack				4400		2	
Kelvington						4	No elevator Crop Input only
Kindersley	P	1996	19700	41700	*	10	
	A	1996	22000				
Lake Lenore	P	1953	1900	4300		1	
	A	1988	1200				
	A	1988	1200				
Lampman						4	No elevator Crop Input only
Langenburg	P	1987	4000	14410	*	10	
	A	1993	3410				
	O	1988	7000				
Last Mountain	P	2001		17140		12	
Maple Creek	P	2000	9000	19000	*	10	
	A	2000	10000				
Marshall East	P	2002	22000	36000		19	
	A	2002	7000				
	A	2002	7000				
Melfort	P	2001	17140	31140		14	
	A	2001	7000				
	A	2001	7000				
Melfort CI						14	No elevator Crop Input only

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Facilities

Location	Type	Year Built	Capacity	Total Capacity	Acquired from Glencore	Number of Employees	Comment
Melville	P	1993	9550	18950	*	16	
	A	1998	9400				
Nokomis	P	1997		31510		14	
Ponass Lake						3	No elevator Crop Input only
Rabbit Lake						1	Closed
Reed Lake	P	2000		18000		12	
Rockhaven	P	1973	1820	4220		2	
	A	1983	800				
	A	1983	800				
	A	1984	800				
Saskatoon						15	No elevator Crop Input only
Shellbrook	P	1983	1140	4870		5	
	A	1969	2130				
	A	1953	1600				
Simpson						3	No elevator Crop Input only
Strasbourg				3700		7	
Swift Current	P	1997	14700	29920		13	
	A		15220				
Turtleford						2	In the process of being closed
Unity	P	1994	9500	25000	*	17	
	A	1994	15500				
Wadena	P	1992	11320	35920		14	
	A	1998	13000				
	A	1994	11600				
Wakaw				4720		3	Elevator not in use
Weyburn	P	2002	21700	35700		13	
	A	2012	7000				
	A	2012	7000				
Whitewood	P	2000	17140	31140		14	
	A	2000	7000				
	A	2000	7000				
White City	P	2000		30140	*	6	
Yorkton	P	1997		27420		22	
Repair Crew						6	
P- Principal Storage							
A-Annex (Extra Storage)							
O-Other (Second House)							